

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SPRINT COMMUNICATIONS COMPANY L.P. AND LEVEL 3 COMMUNICATIONS, LLC	DOCKET NOS. SPU-02-11 SPU-02-13
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**ORDER DENYING MOTION TO RECONSIDER INTERVENTIONS  
AND GRANTING CONSUMER ADVOCATE'S MOTION**

(Issued November 26, 2002)

**PROCEDURAL HISTORY**

On July 9, 2002, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) an appeal from a decision of the North American Numbering Plan Administrator (NANPA) denying Sprint's request for telephone numbering resources in Iowa. On July 17, 2002, Level 3 Communications, LLC (Level 3), filed a similar "Appeal of NANPA's Denial of Numbering Resources" (Level 3's Appeal). On August 19, 2002, the Board issued an order docketing these two appeals, consolidating them for hearing, and setting a procedural schedule.

On July 30, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an appearance in this docket. On September 13, 2002, Qwest Corporation (Qwest) filed a petition to intervene, which was granted by order issued September 24, 2002. On October 10, 2002, Iowa Telecommunications

Services Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a separate petition to intervene, which was granted by order issued October 21, 2002.

### **LEVEL 3's MOTION TO RECONSIDER**

On October 23, 2002, Level 3 filed a "Motion to Reconsider Granting of Interventions or, Alternatively, Motion for Clarification" (the Motion), asking the Board to reconsider its orders granting intervention to Qwest and Iowa Telecom or, in the alternative, to clarify that the scope of this proceeding is limited to Level 3's identified issues. Level 3 argues that this docket is an appeal that should be limited to the issues that motivated Level 3 to file its petition in the first place (and, presumably, the same issues that caused Sprint to file its petition).

In support of the Motion, Level 3 argues that this is an appellate proceeding that should be limited in scope to the issues before NANPA, which Level 3 describes as (a) whether Level 3 has authority to provide service in the geographic areas where numbers are requested and (b) whether Level 3 can place the requested numbers into service within the required timeframe. Level 3 argues that Consumer Advocate has expanded the scope of this proceeding by raising issues relating to alternative approaches to Level 3's proposed offerings and the comparison between Level 3's proposals and the virtual NXX approach that was the subject of the Maine Public Utility Commission proceedings described in the Board's docketing order.

Level 3 argues that Qwest has attempted to expand the scope of this proceeding by raising issues concerning intercarrier compensation, interconnection

obligations, virtual NXX and FX services, and rate setting, while Iowa Telecom seeks to further expand the matter by arguing about the applicability of number portability and its potential effects on Iowa Telecom. Level 3 argues that the scope of this proceeding should not be expanded "to include a vast array of tangentially related issues that are more appropriately handled in a generic proceeding." (Level 3 motion at p. 4.)

On October 29, 2002, Iowa Telecom filed a resistance to Level 3's motion, arguing that the Board's earlier orders in this docket expressly included alternative solutions as a part of the subject matter of this proceeding. Iowa Telecom states that it has a specific interest in alternative number conservation solutions, as discussed in the direct testimony of Iowa Telecom witness Larsen. This interest meets the standard for intervention pursuant to 199 IAC 7.2(7)"d", which requires that a prospective intervener have an interest in the subject matter of the proceeding. Accordingly, Iowa Telecom concludes there is no basis on which to reconsider the granting of intervention to Iowa Telecom.

The Board will deny Level 3's request for reconsideration of the orders granting intervention to Qwest and Iowa Telecom. The Board will also decline Level 3's proposal to narrowly define the scope of this proceeding through clarification. The Board notes that Level 3's appeal filed July 17, 2002, alleges that NANPA's actions were not competitively neutral; this allegation requires an analysis of the competitive impacts of the Level 3 and Sprint proposals, which logically leads to an examination of the market in which they propose to compete. That, in turn,

requires an examination of the alternative ways in which Level 3 and Sprint may engineer their networks and the resulting costs that may be imposed on them and on their competitors through intercarrier compensation arrangements, other provisions of their interconnection agreements, or other means. While it is too early in this proceeding to make a final determination regarding the relevance of any particular evidence, it appears likely that information relating to these matters will be relevant to the Board's final decision.

Moreover, Level 3's appeal makes allegations regarding "Level 3's constitutional rights under the Commerce, Due Process, and Takings clauses." (Appeal at p. 6.) Level 3's appeal does not explain the basis of these allegations in any detail, but the assertion of these broad constitutional issues appears to be inconsistent with Level 3's current position that the issues in this proceeding should be narrowly defined and limited to NANPA's administrative function of issuing telephone numbering resources.

Level 3's motion to reconsider proceeds from the assumption that this is an appellate proceeding limited to the issues as Level 3 defines them because "there is not (and cannot be) a record on which the Board can base a decision." (Motion at p. 6.) The Board disagrees with Level 3's assumption. NANPA did not hold a hearing in this matter, nor should it have; that is not NANPA's function. Level 3's due process right is to a hearing before this agency, not before NANPA. That is why the Board has docketed the Level 3 and Sprint appeals and established a procedural schedule. As a result of the hearing to be held in this docket, the Board should have

a complete record to consider when making its decision. That record should include evidence relevant to all of the issues raised by the parties or the Board.

Finally, the Board will respond to Level 3's argument that the alleged expansion of issues in this proceeding "is particularly a concern under the Board's present cost-allocation regime" (Motion at p. 5, n. 2) because an intervener may raise new issues that cause more Board costs that may be allocated to the petitioner, thereby "allowing competitors to spend the plaintiff's [sic] money." The Board does not agree with this analysis. The Board's cost-allocation standards allow the Board to divide its costs among all of the parties in an equitable manner; if it appears an intervener has raised new issues in an attempt to run up costs for the petitioner, the Board has the authority to assess its costs appropriately.

### **CONSUMER ADVOCATE'S MOTION**

On November 15, 2002, Consumer Advocate filed a motion asking the Board to direct the parties to this proceeding to address in their pre-filed testimony an alternative solution reached by the New Hampshire Public Utilities Commission in an order issued October 28, 2002. A copy of the New Hampshire order was attached to Consumer Advocate's motion.

The Board will grant Consumer Advocate's motion to the extent of asking the parties to address the recent New Hampshire decision, and its possible application in Iowa, in their prefiled testimony in this docket.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The "Motion to Reconsider Granting Interventions or, Alternatively, Motion for Clarification" filed by Level 3 Communications, LLC, on October 23, 2002, is denied.

2. The "Motion" filed by the Consumer Advocate Division of the Department of Justice on November 15, 2002, is granted to the extent described in the body of this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of November, 2002.